CARDROSS CASE.

REPORT

TO THE

COMMISSION OF THE GENERAL ASSEMBLY

OF THE

Free Church of Scotland,

ON WEDNESDAY, 10TH AUGUST 1859.

WITH

SPEECH OF REV. DR BUCHANAN.

EDINBURGH:
JOHN GREIG & SON, OLD PHYSIC GARDENS.
MDCCCLIX.

At Edinburgh, the Tenth day of August Eighteen hundred and fifty nine years.

Which day the Commission of the General Assembly of the Free Church of Scotland being met and duly constituted. *Inter alia*,—

The Commission heard a Report from the Committee on the Cardross case, which was given in and read, in the absence of Mr George Dalziel, a Member of Committee, who had prepared it, by Dr Robert Buchanan, also a Member thereof.

Thereafter Dr Buchanan addressed the Commission on the subject of the Report.

The Commission recommend the Report of the Committee on the Cardross case, and the Statement of Dr Buchanan thereanent, to be printed and circulated with the sanction of this Commission.

Extracted from the Records of the Commission of the General Assembly of the Free Church of Scotland, by

H. Wellwood Moncreiff, *Cl. Eccl. Scot. Lib.*

REPORT, &c.

Dr Buchanan rose and said—On the part of the Committee on the Cardross case, I have to lay before the Commission a Report, which I hold in my hand, drawn up by Mr Dalziel, who is unavoidably absent. The report is as follows :—

In order to remove any misapprehension in regard to this case, it may be right to state shortly the nature of the two actions of reduction at Mr M'Millan's instance, against the Free Church, and the procedure which has taken place in these. It will be in the recollection of the Members of Commission that the case of Mr M'Millan was brought up by appeal to the General Assembly of 1858. It was decided by that Assembly that he had been guilty of certain immoralities, and therefore, they suspended him from the office of the ministry *sine die*. Against this sentence Mr M'Millan appealed to the Civil Court, by presenting a note of suspension and interdict, praying the Lords of Council and Session to interdict, prohibit, and discharge the Free Church and the Presbytery of Dumbarton from carrying into effect the sentence of the General Assembly. This note of suspension and interdict came before Lord Kinloch, Ordinary, who, after hearing counsel for Mr M'Millan, pronounced an interlocutor refusing his note of suspension and interdict as incompetent. Thereafter, the note of suspension and interdict having been laid on the table of the General Assembly, Mr M'Millan was cited to appear, two days afterwards, before the Assembly, to answer for his conduct in appealing to the Civil Court for redress in defiance of the standards of the Church and the formula signed by him. Mr M'Millan appeared at the bar of the Assembly, and the question having been put to him whether the application to the Civil Court for an interdict against the Free Church carrying into effect the sentence pronounced by the General Assembly against him, had been taken at his instance, and by his authority, yea or nay? Mr M'Millan having answered in the affirmative, it was thereupon moved, seconded, and unanimously

agreed to by the Assembly, that in respect of the answer given by Mr M'Millan, he be deposed from the office of the holy ministry; and he was deposed accordingly. Mr M'Millan brought two actions of reduction in the Civil Court—the first for reducing and setting aside the sentence of suspension first pronounced against him—and the second, for reducing or setting aside the sentence of deposition. The first summons calls as defenders, the General Assembly of the Free Church, Dr Beith their Moderator, and Dr Clason and Sir Henry Moncreiff, their principal clerks, as representing the General Assembly; and the summons calls upon the defenders to produce the judgment or sentence of the General Assembly, suspending him from the office of the ministry *sine die*, "to be seen and considered by the Lords of Council and Session," in order that the same may be reduced, and the pursuer, Mr M'Millan, reponed and restored against the same *in integrum* by a decree of the Court of Session; and further, that the defenders should be decerned and ordained to make payment to him of £500 in name of reparation and damages, and as a *solatium* to him in the premises. The General Assembly appointed a special committee to watch over the matter, namely,—Dr Beith the Moderator, Dr Buchanan, Dr Candlish, Dr Bannerman, Sir Henry Moncreiff, ministers; and Mr Murray Dunlop, Mr Earle Monteith, Mr George Dalziel, and Mr John Hunter, elders. Principal Cunningham was afterwards added to the committee. A preliminary defence was put in to this action of reduction, whereby the defenders declined to produce the foresaid sentence of the suspension by the General Assembly, in respect that the jurisdiction of the Court of Session was excluded, and that the case was one of ecclesiastical discipline. Lord Benholme, Ordinary, before whom the case came, ordered a record to be made up on the preliminary defences. In a note, the Lord Ordinary stated that—"he is of opinion at present (without committing himself to a final opinion, after the case has been matured on a closed record by admission or proof), that if the statements of the defenders were admitted or proved, the preliminary defences must be sustained, and all discussion on the merits of the reduction excluded." A record was therefore made up on the preliminary defences. The following were the pleas in law stated for the defenders:—

1st, The sentence complained of having been pronounced in a matter of ecclesiastical discipline by a judicatory of the Free Church of Scotland, an association of Christians, tolerated and protected by law, any review of or complaint against that sentence in the Civil Courts is excluded. 2d, The pursuer, as a minister of the Free Church, contracted and bound himself to submit to the discipline and government

of that Church. 3d, It is not a relevant ground for calling for production and reduction of the writs in question, that the defenders have deviated from the ordinary forms of process in observance in the Free Church, the same being a matter exclusively within the cognisance and regulations of the Free Church and its judicatories.

The record having been made up and closed, the case was afterwards fully debated before Lord Benholme. His Lordship pronounced the following interlocutor on 15th February last :—

" The Lord Ordinary having heard parties' procurators upon the preliminary defences, and made avizandum, Finds that, prior to the Disruption in 1843, the pursuer was a minister of the Established Church of Scotland,—that on the occasion of that event he adhered to the Free Church,—that he signed the Protest No. 25 of process, by which the subscribers separated themselves from the Establishment,—that he also subscribed the Deed of Demission, of which No. 14 is an extract,—and that on occasion of his being admitted minister of the Free Church of Cardross, he subscribed the formula which is engrossed on page eight of No. 27 of process: Finds that the present action calls for production, with a view to reduction, of a resolution or sentence of the General Assembly of the Free Church pronounced as a matter of ecclesiastical discipline in the course of a process or libel raised against the pursuer at the instance of the Free Presbytery of Dumbarton, whereby the said Assembly suspended the pursuer from the office of the ministry *sine die*, and loosed him from his charge : Finds that the grounds of reduction alleged against this sentence are certain irregularities in the procedure upon which that sentence followed, whereby it is set forth that the said General Assembly have violated their own rules and practice, and those of the Free Church : Finds that by the fundamental principles of the Free Church, as established in the foresaid deeds and their other standards, to which the pursuer has given his personal adherence, all matters of ecclesiastical discipline are referred to the final sentence of their General Assembly, as the body entitled exclusively to adjudicate upon them : and Finds that its members, including the pursuer, are bound to submit to such final sentences, and not to bring them in question before any Civil Court : Further finds, in respect of its subject matter, this action is incompetent in this Court ; therefore sustains the preliminary defences, dismisses the action, and decerns : Finds the pursuer liable in expenses," &c. (Signed) " H. J. Robertson."

Such is the judgment pronounced by Lord Benholme in the action of reduction brought by the pursuer of the sentence of suspension

pronounced against him by the General Assembly. A similar course of procedure took place in the action of reduction of the sentence of deposition. That summons, however, not merely called the Free Church and its official representatives as defenders, but it also called Dr Beith, Dr Candlish, and Dr Bannerman, separately, as defenders, the two latter being the parties who had moved and seconded the sentence of deposition, and Dr Beith the party who pronounced it as Moderator. The summons calls on the defenders to produce the sentence of deposition, "to be seen and considered by the said Lords," that they may reduce the same; and the summons farther concludes against Dr Beith, Dr Candlish, and Dr Bannerman, as individuals, that they should pay to the pursuer £3000 as damages, and as a *solatium* to him in the premises. A record on the preliminary defences was also made up in this case, and the same pleas in defence were urged as those stated in the previous case, with the additional plea on behalf of the individual defenders, that "they had acted strictly within the line of their duty and competency, as members of an ecclesiastical court, under whose authority the case fell." Lord Benholme also heard counsel in this case, and on the 15th of February last he pronounced the following interlocutor:—

"The Lord Ordinary having heard parties' procurators on the preliminary defences, and made avizandum: Finds that this action seeks for production, with a view to reduction, of a resolution or sentence of the General Assembly of the Free Church, whereby the pursuer was deposed from the office of the ministry, proceeding upon his confession or acknowledgment that he had presented to the Court of Session a note of suspension and interdict against a sentence of suspension pronounced against him by the said Assembly: Finds that the pursuer, as a member of the Free Church, and bound by his subscription and adherence to its standards and formula, is not entitled to pursue such action: And finds, *separatim*, that this action, in regard of its subject matter, is incompetent in this court. Therefore sustains the preliminary defences, dismisses the action, and decerns: Finds the pursuer liable in expenses," &c.

(Signed) "H. J. Robertson."

The pursuer reclaimed to the First Division of the Court of Session against the judgments which had been pronounced by Lord Benholme in these two cases. The Inner Court, in the month of May last, after hearing the counsel for the parties very fully, took the cases to avizandum. After a delay of some weeks they pronounced an interlocutor on 15th June last, "appointing the parties respectively to give in

minutes setting forth the admissions they respectively make in regard to the writings referred to in the proceedings, and whether they do or do not renounce further probation." Minutes for the parties were accordingly put in, and afterwards revised. These, in substance, admitted the accuracy of the documents produced, and that the parties were willing to renounce further probation. It was expected that the Court would shortly thereafter give judgment in the case, but, instead of doing so, they ordered it to the roll to inquire whether the defenders would satisfy the production, that is, whether they would produce the two sentences of suspension and deposition "to be seen and considered" by the Court. A consultation was thereupon held with the counsel for the defenders, namely, the Lord Advocate, Mr Young, and Mr Clark. They advised the defenders not to satisfy the production, and Mr Murray Dunlop concurred in their opinion. Mr Clark, the junior counsel for the defenders, having intimated to the Court that the defenders declined to satisfy the production, the Court pronounced the following interlocutor :—

"20*th July*, 1859—The Lords having resumed consideration of this cause, conjoin this cause with another cause at the pursuer's instance, also in this day's roll; and in the conjoined actions, recall *in hoc statu* the interlocutors of the Lord Ordinary, reclaimed against in the said conjoined actions, and appoint the parties to give in written cases on the defences pleaded against satisfying the production in both of the conjoined actions, and that against the first box-day in the ensuing vacation and to interchange the cases, revise, print, and box the same on or before the third sederunt day of November next.

(Signed) "Dun. M'Neill, *I.P.D.*"

Such is the present position of these cases—cases of the very gravest moment, involving, as they do, the most sacred rights and liberties, not only of the Free Church, but of all other Churches in the land.

(Signed) Alex. Beith, *Convener.*

Dr Buchanan then said—Having now laid this Report on the table of the Commission for the information of the Church, I beg leave to add a sentence or two in my own individual capacity on this very momentous subject. I am not an alarmist, and I have the utmost respect for the civil tribunals; but the interests at stake in this litigation are too great and too sacred to admit of our looking on while it proceeds with any other feelings than those of the most profound solicitude. We thought we had some right to call our Church free. At least we paid a great price to secure her freedom. The sacrifices of

the Disruption are no slight evidence of the value we set upon our spiritual liberties. We surrendered to the State all which, as a Church, we had received from its hands—the status and endowments of her civil establishment—contented to lose all these in order to conserve this one prerogative, that of administering the affairs of Christ's house in submission to Himself alone. We thought indeed, and still firmly believe in the historical fact, that the prerogative in question—the prerogative of an exclusive jurisdiction in matters spiritual—had been part and parcel of that constitution which the law of the land recognised and ratified as belonging to her, even as an Established Church. But when the supreme power of the State refused, in the face of our solemn protest and appeal, to admit this claim, our controversy with the courts of law was at an end. We resigned our benefices and our parish churches. We rendered unto Cæsar the things that were Cæsar's; and deemed it sufficient recompense that thenceforth we should be left free to render unto God, without further interference, "the things which are God's."

For fifteen years we have gone on in the full belief that on this footing our great Disruption conflict had been finally settled and concluded. Nor did the earlier stages of this Cardross case in the least disturb this pleasing conviction. The Lord Ordinary who was applied to for an interdict to hinder the execution of our spiritual sentence, dismissed the application as incompetent. Another Lord Ordinary, before whom the actions in this case which are now in Court were brought, sustained our preliminary pleas in bar of the Court's jurisdiction, and gave judgment out and out in our favour. But things have now taken, or are threatening to take, a somewhat different turn; and though no seriously adverse decision has been yet pronounced, the time has assuredly come for watching very closely the course of events, and for being ready to take whatever course the emergency may demand. It was, under God, our great safety at the period of the Disruption, that our people were wide awake to the true nature of the question that was at issue, and saw clearly when the crisis came what they had to do. It seems to be not unnecessary that they should be now awaking again. It is the very same vital principle—the great principle on which the Disruption turned—the principle of the sole Headship of Christ, which the present litigation involves. Let the actions of Mr M'Millan be decided in his favour, and I hesitate not to say that a worse thing by far than the Disruption will have befallen us. For then it will have been formally declared that the free exercise of discipline, even in an unestablished Church, is no longer to be allowed. I say this deliberately and advisedly. Such

a decision would be a fatal blow struck at the spiritual liberty of every Church in Scotland—nay, a blow struck at the purity of religion; for the purity of religion and the Scriptural integrity of church discipline must stand or fall together.

To justify this strong assertion—to justify it to the full—it is only necessary to look at the case, the Report upon which has just been laid before the Commission. What is it which, in that case, the Court of Session is asked to do? Mr M'Millan, late minister at Cardross, was found guilty by the Supreme Court of the Free Church of certain grave immoralities, and was in consequence suspended *sine die*, from the ministry, and separated from his pastoral charge. His case, therefore, was obviously, and on the very face of it, a simple case of church discipline—a case which, from the very nature of things, does and must belong exclusively to the cognisance of the Church Courts. Now, this is the first and the fundamental case which Mr M'Millan has brought into the Court of Session. And what is it that he asks the Court of Session to do in regard to it? It is this, and nothing less than this: to have the spiritual sentence of the Church, suspending him from the ministry, and separating him from his pastoral charge "reduced, retreated, rescinded, cassed, annulled, decerned and declared to have been from the beginning, to be now, and in all time coming, null and void, and of no avail, force, strength, or effect, and to bear no faith in judgment outwith the same; and the said Rev. John M'Millan, pursuer, to be reponed and restored against the same, *in integrum*." In other words, he asks the Civil Court, first, to set aside as null and nugatory a solemn spiritual sentence, pronounced by the Supreme Court of the Church, to whose authority Mr M'Millan in spiritual matters was subject; and next, he asks the Civil Court, either by its own naked act to restore him to the exercise of the Christian ministry, and to the pastoral charge of the Cardross congregation, or to compel by civil pains and penalties the General Assembly of the Free Church to do all this for him. This, and nothing less than this, is what he asks the Court of Session to do. Of course, I don't believe, and won't believe till I see it, that the Court of Session will ever commit itself to either of the tremendous alternatives between which Mr M'Millan invites it to choose. The one is in its own nature a simple impossibility. The Court of Session can no more restore Mr M'Millan to the office and functions of the Christian ministry, or give him the spiritual charge of a congregation, than it could make him King of the British Isles. As regards the other alternative—the alternative of compelling the Church to take orders in matters spiritual from any other authority

than that of the Lord Jesus Christ, speaking in His Word—it is enough to say that a Church which stood the fiery trial of the Disruption, will know how to meet such an attempt, if, which God forbid, it should ever come to be made.

I have alluded to the Disruption, and to the struggle with the Civil Courts which preceded it. I have no hesitation, however, in saying, that to do what these Courts are asked to do in the Cardross case, would be to go beyond anything that was done by any even of those decisions which rent the Established Church in pieces. In all those decisions there was one outstanding specialty which the Civil Courts could urge in vindication of their then interference with the spiritual sentences of the Church. They could point to a certain civil statute which, as they alleged, imposed certain obligations on the Courts of the Church; and it was upon that statute they chiefly founded their adverse decisions. There is no such statute here, nor anything that has the slightest conceivable resemblance to it. The Court of Session has itself, and since the Disruption, recognised this distinction, and acted upon it even when it was dealing with the Established Church. In the year 1851, a case was brought into the Court of Session very closely resembling that of Mr M'Millan. It was the case of Lockhart, a minister of the Established Church in the Presbytery of Deer. The grounds on which the interference of the Court of Session in that case was sought were these—that the libel was defective, and that "the procedure before the Presbytery had been generally irregular and oppressive." In disposing of this case, Lord Fullerton, one of the Judges, said—"This is an attempt which, if successful, would go far indeed. For on the very principle that we are called on to suspend the proceedings taken by the Presbytery of Deer, under an order of the General Assembly, we may, and in all probability will, be called upon to review every sentence of the Church Courts which a party considers or maintains to be contrary to form and unwarranted by the justice of the case." Referring to the plea that the Court had done something of this kind before in the non-intrusion cases previous to the Disruption, Lord Fullerton said—"These were very special cases, and were decided on that specialty." In them "the alleged contumacy against the Church Courts was obedience to the law of the land," and therefore his Lordship added, "whatever may be thought of these cases, there is clearly no room whatever for applying any such principle to a case like the present, where the offender, the offence, and the sentence are all within the province of the Church Courts.

On this broad ground it was that the Court dismissed the action. In giving judgment, the Lord President Boyle spoke in these clear and

unequivocal terms :—" The only question we have to determine is whether this Court has any power to interfere with the proceedings of the Church Courts in a matter of ecclesiastical discipline. Although we may form a different opinion in regard to matters of form, or even of substantial justice, in my opinion we cannot interfere to quash the sentence. I listened with the greatest attention to the argument of Mr Logan, and though he opened the case with his usual ability, he cannot make bricks without straw." . . . " The offence was an ecclesiastical offence. The charge was tried in an ecclesiastical court, and we cannot interfere." The Court decided accordingly, declaring " that the offences committed were proper for the cognisance of the Church Courts, and that such being the case, the Civil Court had no right either to control the Church Courts in their procedure, or to review their sentence on its merits." This ought to be enough surely to settle the Cardross case. With such a decision standing on the records of the Court, and of so recent a date, one wonders that there should be a moment's hesitation on the subject.

It will not of course be pretended that the rule which the Court thus laid down for its guidance in regard to cases of discipline in the Established Church, is to be no rule at all in regard to the discipline of unestablished Churches. To lay down such a doctrine would be virtually to abolish the law of toleration. It is absurd to say that a Church is tolerated, if that spiritual discipline which is essential to its very existence is not to be tolerated also. If any distinction were to be made between Established and non-Established Churches, all the precedents of the Court of Session would warrant us to expect that it should be a distinction in favour of the greater liberty and independence of non-Established Churches. It used to be the received maxim of the Court of Session, previous to the Disruption, and all through the struggle that led to it, that the Established Church " was the creature of the State," and as such necessarily subject to the control of the civil tribunals. It will not be affirmed that the Free Church, or the United Presbyterian Church, is the creature of the State. In point of fact, the Court of Session has already, in other cases, once and again, disclaimed all right of interference with the jurisdiction and discipline of non-Established Churches. It may be sufficient to refer, in proof of this assertion, to the well-known Campbelton case in 1839. In that case there were two points raised—the one as to whether or not the Establishment principle was an essential and fundamental tenet of the Relief Church—the other, as to certain alleged irregularities in the Presbytery's procedure in cutting off the pursuer, the Rev. Mr Smith, from the Relief body. The former of these points was obviously a

perfectly competent question for the Civil Court to entertain, with a view to the decision of a question of property; and accordingly the Court of Session entertained and decided it. But the latter point—the point which involved the spiritual sentence pronounced by the Relief Church against Mr Smith—the Court of Session refused to look at. Lord Medwyn said it was "purely a case of discipline," with which the Court could not interfere. Lord Meadowbank held "that Mr Smith had no title to pursue, because the Relief body being the body that had jurisdiction over him, had deprived him of his office; and having done so, his right to the meeting-house and pulpit fell of necessity. Lord Justice-Clerk Boyle said—"With regard to the alleged irregularities in the procedure before the Presbytery and Synod, in regard to the mode of setting Mr Smith aside, as being in matters clearly connected with the discipline of the Relief Church, it cannot be thought that this Court can interfere. That point was ruled by Lord Braxfield's decision in the case of Auchincloss, confirmed by the Court." In regard to the case of Auchincloss, it may be stated in passing that it is referred to in the Faculty collection of decisions in connection with the case of Dun *v.* Brunton, decided in 1801, in the following terms:—"In the case of Auchincloss against Black, Lord Justico-Clerk M'Queen refused to review the proceedings of the Associate Synod so far as they regarded an ecclesiastical offence." The Court accordingly decided that as "to the alleged irregularities in the procedure before the Church judicatories in setting Mr Smith, the Relief minister of Campbelton, aside, that being in a matter connected with the discipline of the Dissenting body, the Court of Session could have no jurisdiction."

It will be observed that in the two cases now alluded to, cases perfectly analogous to that of Mr M'Millan, the Court evidently assumes the great fundamental fact that the exercise of discipline is a right and duty inherent in a Christian Church. It asks no proof on this point. It takes it for granted. It demands no special contract binding the minister to be subject to that discipline. It is contented with the fact that he was a minister of the Church by which the discipline was exercised. That fact being admitted, the Court asks nothing more in order to be satisfied that they cannot interfere. 'It is nothing to us,' the Court substantially says, 'for the pursuer to allege that the Church Courts have not adhered to their forms, that their procedure has been irregular or even oppressive. It may be so, but we have nothing to do with that. The Church, in a matter of discipline, is the sole judge of its own forms of procedure, as well as of the merits of the case. We have no right

to review either the one or the other.' And on this broad ground—a ground involved in the very law of toleration itself—they turned the pursuers out of Court. To have taken any other ground than the one now stated would obviously have been, as Lord Fullerton clearly shewed, to have constituted the Court of Session into a court of review over every Church Court in the kingdom. If, in a case of church discipline, the allegation of irregularities in the procedure of the Church Courts, or that injustice has been done, or that indirectly some civil interest may come to be affected by the decision—if on any such ground a right to review and reverse the spiritual sentences of Church Courts were to be claimed by the Courts of Law, there is no case of discipline whatever from which the interference of the Civil Courts could be excluded. It would be impossible in that event to debar even a drunkard or a debauchee from the Lord's Table without the risk of being dragged into the Court of Session; and, in short, the exercise of church discipline as a spiritual function—a function performed in the name and by the authority of the Lord Jesus Christ—must, on such a footing, come to an end.

And it is just because the sustaining of Mr M'Millan's action in the Cardross case would inevitably lead to that ruinous result, that it becomes at once the interest and imperative duty, not only of the Free Church, but of every non-Established Church in the country, to watch closely the course which that action takes. Certain it is that if the Free Church be not safe from the inroads of the Courts of Law, as little, nay, still less, is any other sister Church in the country safe. The United Presbyterian Church, the Scottish Episcopal Church, the Reformed Presbyterian Church, the Congregational Church, all stand on the same footing that we do, as Churches tolerated by law in this kingdom. They claim to be not mere voluntary associations, like banks or friendly societies, but Christian Churches, deriving their existence and their authority from no human source, but from the Lord Jesus Christ. It is sheer drivelling, or worse, to attempt to place the one of these classes of institutions on the same footing with the other. Banks and friendly societies fall naturally and necessarily within the jurisdiction of the courts of law. Every function they perform, and every object for which they exist, is in its own nature the proper subject of civil control. Who will venture to say that the same thing can be affirmed of a Christian Church? Its objects and functions are wholly spiritual; they lie entirely outside of and beyond the province of the civil tribunals. This is the claim which every non-Established Church in this country makes, and the law wisely and righteously tolerates that claim. Nay, the law must either tolerate that claim, or it

must persecute the Church that makes it. The case admits of no other alternatives; and the Court of Session will assuredly find, in following out this Cardross case, that one or other of these alternatives it must accept, with all the consequences that legitimately follow from it.

So far, then, the Free Church and all the other non-Established Churches of the country occupy precisely the same ground. They stand, as regards the exercise of their spiritual authority, on the broad basis of a right which is inherent in them as Christian Churches, and their claim to which the law tolerates. But, in addition to this right to an exclusive jurisdiction in matters spiritual, which belongs to the very nature of a Christian Church, the Free Church has expressly embodied her claim to that jurisdiction in documents which Mr M'Millan has personally subscribed, and by which every one of her office-bearers is expressly and specifically bound. The Court of Session is in possession of evidence of this fact—evidence admitted on both sides of the bar—and if, therefore, the Court of Session, without regarding either the general principle already stated, or this specific contract, shall find itself at liberty to break in upon our jurisdiction, and to interfere with the exercise of our spiritual discipline, then, beyond all question, and *à fortiori*, there is no other Church in the country whose right to the independent exercise of church discipline will not thereby be effectually and completely taken away.

To protect their discipline, other non-Established Churches have nothing but the great general principles involved in the law of toleration. The Free Church has, in addition to that security, her Disruption articles, which constitute, as within herself and among her own members and office-bearers, a special and distinct agreement. In the formula which Mr M'Millan subscribed on being admitted to the charge of the Cardross congregation, that agreement is embodied in these solemn and explicit terms:—"I also approve of the general principles respecting the jurisdiction of the Church, and her subjection to Christ as her only Head, which are contained in the Claim of Right and in the Protest referred to in the questions already put to me; and I promise that through the grace of God I shall firmly and constantly adhere to the same, and to the utmost of my power shall, in my station, assert, and maintain, and defend the said doctrine, worship, discipline, and government of this Church by kirk-sessions, presbyteries, provincial synods, and general assemblies, together with the *liberty and exclusive jurisdiction thereof;* and that I shall in my practice conform myself to the said worship, and submit to the said discipline, and government, and *exclusive jurisdiction*, and not endeavour, directly or indirectly, the prejudice or subversion of the same." This formula, together with the

Claim of Right, and the Protest to which it refers, are before the Court in the Cardross case. These documents, together with the great general doctrine on which they are based—the doctrine, viz., that an exclusive jurisdiction in matters of discipline is inherent in the Christian Church, and that the Free Church, and other non-Established Churches in this country notoriously making this Claim, are tolerated by the law of the land—these are substantially the grounds on which we deny the competency of the Court of Session to entertain such an action as Mr M'Millan has raised. Our pleas are entirely of a preliminary nature, objecting to the Court's competency to meddle with our spiritual sentences at all. For this reason we have refused, under the advice of our able counsel, to "satisfy production"—that is, to submit our sentence to the consideration of the Court at all. On the merits of the case we cannot possibly consent to plead; we cannot answer to a civil tribunal for the mode in which we administer the spiritual concerns of the Church of Christ. On such matters we can take no orders, and we can accept no directions, but from Christ Himself speaking to us in His Word. All the world knows that with us this is a matter of conscience—a matter in which we have no liberty to yield. We can suffer, if need be, and as we have done before, but we may not sin.

I have deemed it my duty to make this statement. I have made it in no spirit of disrespect to the Civil Courts. A question has been raised before them, and they must dispose of it. It has not been of their seeking, and we have no right, and I am sure we have no disposition, to assume that they will not do their duty wisely and faithfully in regard to it. But we also have a duty, and past experience has taught us the necessity of looking before us, and of being prepared for whatever may be awaiting us. We deprecate, as a very great and grievous calamity, any sort of collision with the courts of law. We desire to follow after the things which make for peace. Though dispossessed, as we honestly believe, wrongfully, of our position, and privileges as the Established Church of Scotland, we have quietly acquiesced in the event, and have sought to do our duty in the altered circumstances in which Providence has placed us. Her Majesty, we venture to think, has no more loyal subjects than the members of the Free Church in all her wide dominions. We have, in truth, no doubt whatever that, though some may have meant it for evil, God meant our disestablishment for good. He has gathered out of that event a great testimony for conscience and for Christ, and converted it into a mighty movement in furtherance of the Gospel. Nor have we any doubt at all that should it seem good to Him to try our Church's constancy again, the issue will ultimately be for the honour of His own name and cause.

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